

1 IN THE UNITED STATES DISTRICT COURT

2 DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA)
4) Case No. 1:13CR42-1
5 vs.)
6) Greensboro, North Carolina
7 WILLIE JAMES CARPENTER,)
8) July 11, 2013
Defendant.)
-----) 10:41 a.m.

9 TRANSCRIPT OF SENTENCE

10 BEFORE THE HONORABLE WILLIAM L. OSTEEN, JR.

11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Government: ANAND P. RAMASWAMY, AUSA
14 Office of the U.S. Attorney
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Greensboro, North Carolina 27401

16 For the Defendant: STACEY D. RUBAIN, Esq.
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20
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23

24 Proceedings reported by stenotype reporter.
Transcript produced by Computer-Aided Transcription.
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1 P R O C E E D I N G S

2 (At 2:05 p.m., proceedings commenced.)

3 MR. RAMASWAMY: The Government calls United States
4 of America versus Willie James Carpenter in 1:13CR42-1.
5 He's represented by Ms. Rubain and is here for sentencing.

6 THE COURT: Good afternoon, Ms. Rubain.

7 MS. RUBAIN: Good afternoon, Your Honor.

8 THE COURT: Are you and Mr. Carpenter ready to
9 proceed?

10 MS. RUBAIN: We are, Your Honor.

11 THE COURT: Have you received a copy of the
12 presentence report and reviewed it with him?

13 MS. RUBAIN: I have, Your Honor.

14 THE COURT: Are there any objections?

15 MS. RUBAIN: There were no objections, Your Honor.

16 THE COURT: All right. Mr. Carpenter, let me ask
17 you, sir, first of all, have you reviewed a copy of the
18 presentence report with Ms. Rubain?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: And do you generally agree with the
21 report?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: You may have a seat then. I will
24 adopt the presentence investigation report without change.
25 In Mr. Carpenter's case, the offense of conviction, that is,

1 a violation of 18 USC Section 2422(b), does carry a
2 mandatory minimum sentence. The resulting advisory
3 guideline calculation is as follows:

4 A total offense level of 33.

5 A criminal history category of one.

6 A guideline imprisonment range of 135 to 168
7 months.

8 A supervised release range of five years to life.

9 A fine range of \$17,500 to \$175,000.

10 And a special assessment of \$100 is mandatory.

11 Ms. Rubain, will there be any additional evidence
12 on behalf of Mr. Carpenter?

13 MS. RUBAIN: No, Your Honor.

14 THE COURT: Then I will hear from you at this --
15 well, I guess, Mr. Ramaswamy, is the victim or anyone on the
16 victim's behalf here today and wish to address the Court?

17 MR. RAMASWAMY: No, sir. I'm sorry, yes, there
18 is. May I inquire?

19 THE COURT: You may.

20 MR. RAMASWAMY: The victim's mother is present,
21 Your Honor, but she does not wish to be heard.

22 THE COURT: All right. Thank you. Then,
23 Ms. Rubain, I'll hear from you at this time as to what
24 constitutes a sentence that is sufficient but not greater
25 than necessary taking into consideration the advisory

1 guideline calculation as well as all other factors set forth
2 under 18 USC Section 3553.

3 MS. RUBAIN: Thank you, Your Honor. Your Honor,
4 first, I begin by recognizing Mr. Carpenter does have some
5 family support here in the courtroom. His uncle is
6 seated -- I'm sorry, they must be on the other side. I
7 think they're on the other side hidden by me -- as well as a
8 cousin. They have been very involved throughout my
9 representation of Mr. Carpenter. Mr. Carpenter's wife,
10 Estella, who is referenced in the presentence report as well
11 has been in touch with me, as evidenced by the presentence
12 report remains supportive of Mr. Carpenter and will continue
13 to do that throughout the term of his sentence of
14 imprisonment and thereafter.

15 Your Honor, Ms. Thompson-Graves did a very fine
16 job setting in setting out, I believe, a very great snapshot
17 and picture of Mr. Carpenter's history. I will highlight a
18 few things I think are relevant to the Court's determination
19 as to what a reasonable sentence is.

20 Your Honor, as the Court can see, Mr. Carpenter is
21 55 years of age. He has no criminal history points. He
22 does have some criminal history, as the presentence report
23 notes. I would note for the Court's consideration, though,
24 the last conviction was back in 1997, I believe by my
25 calculation. He's not had any other convictions since then,

1 and the convictions that he does have are for conduct that
2 is very dissimilar to what he is being sentenced for here
3 today.

4 Your Honor, this is quite a difficult case, I'm
5 sure, for the Court's consideration, and it's been one that
6 is quite difficult for Mr. Carpenter. But I will note that
7 he has acknowledged his responsibility, and he has expressed
8 extreme remorse to me, and I would go ahead and express that
9 on his behalf to both the Court and to the victim's mother
10 who is present in court.

11 Your Honor, he does have a very strong work
12 history. He's been an over-the-road truck driver since the
13 early '90s. It seems that in my discussions with him and
14 from the presentence report, there was a period of time when
15 he was on a certain path in terms of having drug involvement
16 and other criminal conduct. He made a decision, I believe,
17 to turn his life around some time in the mid to late '90s
18 once he relocated back to North Carolina where he came to
19 take care of a very sick relative. He has a strong
20 marriage, as I said, to Ms. Carpenter and was extremely
21 involved in her family and participating in his church where
22 unfortunately is where he met the victim in this case.

23 Your Honor, I would contend that there are some
24 very strong factors that would warrant the Court, I believe,
25 to impose the statutory minimum. In terms of adequate

1 deterrence, he is facing a statutory minimum, which is 10
2 years, which is a very significant sentence, especially for
3 someone who is criminal history category number one.

4 Your Honor, the guideline range that we're dealing
5 with, the advisory range, is one that was created because of
6 the cross-reference. Without that cross-reference, his
7 guideline range would have been a little bit lower. I
8 believe it actually would have been below the statutory
9 minimum.

10 Your Honor, I believe that a sentence of 10 years
11 is just punishment. This is someone who is 55 years of age.
12 The likelihood of him to re-offend with the appropriate sex
13 offender treatment with a significant criminal history, I
14 think, is low. You can see from his lack of a record over
15 the last 55 years, or at least in terms of criminal history
16 points, that suggests for this Court that he is very likely
17 not to re-offend.

18 Your Honor, I would also contend to the Court that
19 there are some other factors that the Court should consider
20 that are acknowledged in the presentence report. He does
21 have some severe medical problems. As Ms. Thompson-Graves
22 noted, he suffers from Bell's palsy. That causes him to
23 have severe heart pain, suffer from memory loss. His father
24 died of heart disease, and I believe that Mr. Carpenter, if
25 he has not had that diagnosis, probably will have a

1 diagnosis similar to him in that he does suffer from chronic
2 heart disease.

3 Your Honor, I would also ask the Court in
4 determining whether the Court makes some recommendations to
5 BOP to consider making a recommendation that he be sent to
6 the facility at Butner which has the medical facility. But
7 if the Court is not inclined to do that, of course, I would
8 ask for a designation as close to his home in Durham, North
9 Carolina, as possible.

10 Your Honor, I would also -- in reference to the
11 supervised release recommendation, I believe
12 Ms. Thompson-Graves recommends 10 years. I would ask the
13 Court to consider a term of 5 years. With his age, with the
14 length of his sentence, I don't believe he needs a very long
15 term of supervised release. Of course, he will have to
16 register as a sex offender on the state registry because of
17 this conviction and will have some monitoring because of
18 that as well.

19 Your Honor, I would ask the Court to consider
20 varying downward to the statutory minimum. I believe that
21 sentence is sufficient but not greater than necessary to
22 achieve the 3553(a) goals.

23 Your Honor, if the Court doesn't have any other
24 questions of myself with respect to --

25 THE COURT: One, and that is I understand your

1 points about this whole thing. One of the factors that I
2 have to consider is the need to avoid unwarranted sentence
3 disparities; and rightly or wrongly, in a number of these
4 sex offense cases -- we'll focus specifically on enticement
5 for just a moment -- generally speaking, 10 years is a
6 lengthy sentence, and that's where I generally impose the
7 sentence so long as there was no contact, even -- regardless
8 of the intent, so long as there was no contact.

9 Here, there was contact, to put it in one form, I
10 guess, but there was contact. So I understand your points
11 about 120 months. On the other hand, it's not the base
12 offense here, and we often -- sometimes there are cases
13 where there are prior convictions or other conduct, but
14 often in these cases it's criminal history category of one,
15 good work history, and so on, and so on. So that -- I think
16 I probably would agree with you on most of your argument,
17 but the unwarranted sentence disparities is what I've been
18 wrestling with on this case.

19 MS. RUBAIN: Your Honor, and the only thing that I
20 would respond to that is I think some of the other factors
21 might balance out the distinction in this case where there
22 was some sexual conduct in terms of the Court, I believe,
23 could justify still imposing the statutory minimum because
24 of the other 3553(a) factors. If we were dealing with
25 someone who was 25 years old, maybe having criminal history

1 or limited criminal history or prior sexual contact with a
2 minor, that would be somewhat of a different sentence.

3 We're dealing with someone who is 55 years of age.
4 There's nothing in his criminal history that speaks to this.
5 Because of his age, because of his lack of contact with the
6 criminal justice system, I believe that that sentence of 120
7 months will meet all of the 3553(a) goals with respect to
8 him individually and not looking at him in the general,
9 broader category of those people who are convicted and
10 sentenced in these cases; and because its an individualized
11 assessment, that 120 months has more of a significant effect
12 on Mr. Carpenter than it might have on someone who was
13 younger, someone with a lack of criminal history or some of
14 these other factors that he has in his favor that maybe
15 someone else would not.

16 You know, we can't take away that there was sexual
17 contact here, and it's not for me to explain or justify. We
18 have to deal with what we're given. But I would still
19 contend that the 120 months in terms of applying it to him
20 still meets all of the 3553(a) factors and would be an
21 appropriate and reasonable sentence based on his
22 individualized facts.

23 THE COURT: All right. Thank you. Mr. Ramaswamy?

24 MR. RAMASWAMY: Your Honor, I would agree with
25 counsel that that cross-reference to the production accounts

1 for some of this range, but would note that there's a single
2 instance of approximately 11-second video that just in my
3 opinion does not -- the purpose of the enticement, it was
4 more of a side effect of the meeting.

5 That being said, I would not object to a low end
6 of this advisory guideline range. By saying that, I don't
7 want to discount the actual harm to this victim and her
8 family. I met with the parents several times. They're,
9 again, in my opinion, people who tried to do everything
10 right in raising their daughter, putting on cell phone
11 restrictions, actually quite a few restrictions; and despite
12 those restrictions and by meeting in this -- by attending
13 the same church, she came into contact with the defendant,
14 and over time we have something develop that led to this
15 conduct. I don't wish to be heard any further.

16 THE COURT: All right. Mr. Carpenter, you're not
17 required to say anything. If you choose to remain silent,
18 your silence will not be held against you in any way
19 whatsoever. But you do have the right to address the Court
20 before any sentence is imposed; and if you wish to address
21 the Court, now is the appropriate time.

22 THE DEFENDANT: I just want to apologize to her
23 family.

24 THE COURT: Well, in Mr. Carpenter's case, it's a
25 very -- it's a difficult case. I'm very sympathetic to the

1 victim and the family as well as to Mr. Carpenter, and I say
2 that in some respects because at least I come away with the
3 impression that Mr. Carpenter is genuinely remorseful for
4 what he -- for what occurred here in many respects. On the
5 other hand, it's -- this is a very serious offense and one
6 that rightfully is taken very seriously by the guidelines.

7 I am going to find that a sentence at the low end
8 of the guidelines, that is, 135 months, is sufficient but
9 not greater than necessary.

10 Ms. Rubain -- after taking into consideration the
11 arguments of counsel, the advisory guideline calculation, as
12 well as all other factors set forth under 18 USC Section
13 3553, even recognizing that enticement is the ultimate
14 intent in these cases of this type, fortunately a number of
15 these cases seem to either not result in any actual contact,
16 or law enforcement officers are able to act before any
17 actual contact occurs.

18 But here there is not only enticement, but
19 actual -- an actual physical acting upon that enticement by
20 the defendant in this case, and in my mind that certainly
21 makes the circumstances of the offense more serious than
22 many of the cases that we see.

23 On the other hand, looking at the history and
24 characteristics of the defendant, Ms. Rubain, I -- not that
25 it makes any difference to the analysis, but I see a

1 misdemeanor conviction in 2003, not 1999, and I just want to
2 make sure --

3 MS. RUBAIN: Your Honor, I believe there was a
4 resisting in 2003 --

5 THE COURT: Yeah, a misdemeanor. Your argument
6 still retains the same force; that is, Mr. Carpenter had 10
7 years of good conduct. It seems Mr. Carpenter's got a good
8 employment history and is talented in terms of musical
9 ability. So although I find the need for the sentence
10 imposed to reflect the seriousness of the offense and
11 promote respect for the law to be very significant and
12 substantial, I do find that in terms of deterring
13 Mr. Carpenter as well as protecting the public from further
14 crimes of Mr. Carpenter to be low in this case.

15 I will, therefore, after taking into consideration
16 all those matters, impose a sentence of 135 months. Let's
17 see. There is a recommendation for 10 years of supervised
18 release -- five to life, and life is recommended under the
19 guidelines. But taking into consideration Mr. Carpenter's
20 age as well as his -- the length of the sentence imposed, I
21 will find that seven years is sufficient in Mr. Carpenter's
22 case in terms of supervised release. I will recommend
23 Mr. Carpenter to Butner or a similar medical facility and as
24 close to his home in Durham as possible.

25 Anything further you wish -- want me to address,

1 Ms. Rubain --

2 MS. RUBAIN: Your Honor, I do have a motion to
3 dismiss the remaining count of the indictment.

4 THE COURT: I'll order the dismissal of any
5 remaining counts pursuant to the terms of the plea
6 agreement.

7 Then in Case No. 13CR42, United States versus
8 Willie James Carpenter, as to Count One, it is hereby
9 ordered that the defendant is committed to the custody of
10 the Bureau of Prisons for a term of 135 months followed by
11 seven years of supervised release. A special assessment of
12 \$100 is mandatory, is hereby imposed, and is due and payable
13 immediately. A fine is waived because of the defendant's
14 inability to pay, and restitution will not be imposed in
15 Mr. Carpenter's case.

16 I do recommend to the Bureau of Prisons that the
17 defendant be designated to Butner-FCI, Butner medical
18 facility, or a similar facility, and further that he be
19 designated to a facility as close to his home in Durham as
20 possible.

21 During the period of supervised release, it is
22 ordered that the defendant shall comply with the standard
23 terms and conditions of supervised release. In addition to
24 the standard terms and conditions, the following special
25 conditions are imposed. Mr. Carpenter, if you would like to

1 have a seat, you may do so.

2 One, the defendant shall provide any requested
3 financial information to the probation officer.

4 Two, the defendant shall cooperatively participate
5 in an evaluation and a mental health treatment program with
6 emphasis on sex offender treatment and pay for those
7 treatment services as directed by the probation officer.
8 Treatment may include physiological testing such as the
9 polygraph and penile plethysmograph and the use of
10 prescribed medications.

11 Three, the defendant shall consent to third party
12 disclosure to any employer or potential employer concerning
13 any restrictions that have been imposed upon him.

14 Four, the defendant shall provide personal and
15 business telephone records to the probation officer upon
16 request and consent to the release of certain information
17 from any online, telephone, or similar account.

18 Five, the defendant shall not have any contact
19 other than incidental contact in a public forum such as
20 ordering in a restaurant, grocery shopping, et cetera, with
21 any person under the age of 18 without prior permission of
22 the probation officer. Any approved contact shall be
23 supervised by an adult at all times. The contact addressed
24 in this condition includes, but is not limited to, direct or
25 indirect, personal, telephonic, written, or through a third

1 party. If the defendant has any contact with any child,
2 that is, a person under the age of 18, not otherwise
3 addressed in this condition, the defendant is required to
4 immediately remove himself from the situation and notify the
5 probation office within 24 hours.

6 Six, the defendant shall not frequent places where
7 children congregate, including parks, playgrounds, schools,
8 video arcades, day care centers, swimming pools, or other
9 places primarily used by children under the age of 18
10 without the prior approval of the probation officer.

11 Seven, the defendant shall not view, purchase,
12 possess, or control any sexually explicit materials
13 including, but not limited to, pictures, magazines,
14 videotapes, movies, or any material obtained through access
15 to any computer -- of any material linked to computer access
16 or use.

17 Again, this is another case where we don't have a
18 computer, so I can see the reasoning on the view, purchase,
19 possess, or control any sexually explicit materials, but I'm
20 not sure since there's -- I think I probably better stop at
21 that, Mr. Ramaswamy.

22 MR. RAMASWAMY: There's no evidence that this was
23 a cell phone. There's no evidence of any distribution. I
24 know a smart phone is a computer, but, again, in 10 years, I
25 don't know what computers and smart phones might be.

1 THE COURT: I'm just going to limit it to not
2 purchase, possess, or control any sexually explicit
3 materials including any pictures, magazines, videotapes,
4 movies -- or movies. I'll leave it at that.

5 Eight, the defendant shall submit to a search of
6 his person, property, house, residence, vehicle, papers,
7 computer, or other electronic communication or data storage
8 devices or media and effects at any time, with or without a
9 warrant, by any law enforcement officer or probation officer
10 with reasonable suspicion concerning unlawful conduct or a
11 violation of a condition of probation or supervised release.

12 And, nine, the defendant shall register with the
13 state sex offender registration agency in each jurisdiction
14 where he resides, is employed, carries on a vocation, or is
15 a student. The defendant will be required to keep this
16 registration current. For initial registration only, the
17 defendant must also register in the jurisdiction where he
18 was convicted if he does not reside in that jurisdiction.

19 Mr. Carpenter, you do have the right to appeal the
20 sentence that I have imposed in this case. If you choose to
21 appeal, notice of appeal must be filed within 14 days of the
22 entry of judgment. If you wish to appeal and cannot afford
23 the services of counsel, counsel will be appointed to
24 represent you. Ms. Rubain will be responsible for advising
25 you with respect to your right to appeal and filing a notice

1 of appeal if you instruct her to do so.

2 Anything further, Ms. Rubain?

3 MS. RUBAIN: No, Your Honor.

4 THE COURT: Mr. Ramaswamy?

5 MR. RAMASWAMY: I neglected to bring this up, and
6 I don't think anything like this has come up before, but the
7 victim's father -- stepfather is a corrections officer, and
8 he works at Butner, and it would be --

9 THE COURT: Butner-FCI?

10 MR. RAMASWAMY: Yes, sir. They requested that
11 he -- and I know ultimately it's up to the Bureau of
12 Prisons, but that not be where Mr. Carpenter is designated.

13 THE COURT: I thought for some reason there were
14 two or three different campuses at Butner.

15 MS. RUBAIN: There are, Your Honor. It's a vast
16 complex, and I would think if the victim's father is
17 employed there, they could make appropriate arrangements not
18 to have Mr. Carpenter in the area where he's working. There
19 are several different camps and levels there; and without
20 further information about where he works, I would just
21 leave -- I would ask the Court to leave that up to the
22 bureau --

23 THE COURT: There's no question it's better for
24 both of them if they're at separate facilities just to avoid
25 even the appearance of an issue for anyone. I don't

1 immediately -- I certainly don't jump to the conclusion that
2 either Mr. Carpenter or -- the stepfather, wasn't it -- or
3 the stepfather would take any acts either way.

4 But I'll make the recommendation a little more
5 specific. I'll recommend that he be designated to the
6 facility at Butner so long as or taking into account the
7 fact that the victim's stepfather is an employee of at least
8 one of the facilities -- or the Butner federal correctional
9 facility, and it is the Court's further recommendation that
10 the defendant not be housed at a facility at which the
11 stepfather is employed. I think that's about as good as I
12 can do.

13 MS. RUBAIN: Since he's employed at FCI-Butner,
14 that seems to then make him not --

15 THE COURT: I thought it was a medical facility
16 and then medium security facility and then the camp. He
17 raised his hand. What's the status of --

18 UNIDENTIFIED SPEAKER: It's actually five
19 institutions.

20 THE COURT: Five institutions. And which one are
21 you working at now?

22 UNIDENTIFIED SPEAKER: I'm designated to one, but
23 if I work overtime or anything like that, it could be -- it
24 could be at the medical center or camp or the low -- or
25 medical treatment. Anything like that could be -- you know,

1 I could get assigned to work at any of them.

2 THE COURT: I'm just going to leave it that I
3 recommend Butner, but also further recommend the Bureau of
4 Prisons take into consideration the victim's stepfather is
5 an employee of Butner-FCI. If I won't make you say anything
6 now, but, Mr. Ramaswamy, have you got his name?

7 MR. RAMASWAMY: Perhaps if we can include the
8 stepfather's name which I could pass up to the clerk in the
9 judgment.

10 THE COURT: Yep, let Ms. Welch know that name by
11 the time the judgment -- in the next few days, and then she
12 can include -- give them a little more information for them
13 to have.

14 MR. RAMASWAMY: Yes, sir.

15 MS. RUBAIN: Thank you, Your Honor.

16 THE COURT: All right. Thank you. Did I advise
17 of the right to -- yeah, I did.

18 (At 2:30 p.m., proceedings concluded.)

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CERTIFICATE

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4 I, JOSEPH B. ARMSTRONG, RMR, FCRR, United States
5 District Court Reporter for the Middle District of North
6 Carolina, DO HEREBY CERTIFY:

7 That the foregoing is a true and correct transcript of
8 the proceedings had in the within-entitled action; that I
9 reported the same in stenotype to the best of my ability;
0 and thereafter reduced same to typewriting through the use
1 of Computer-Aided Transcription.

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Date: 11/06/13 Joseph B. Armstrong, RMR, FCRR
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